IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.3072 of 2001

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	NO
5	Whether it is to be circulated to the civil judge ?	NO

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BHARAT COAL DEPOT & 1 - Petitioner(s)
Versus
VERAVAL PEOPLES' CO-OP. BANK LTD. - Respondent(s)

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Appearance :
MR MUKESH A PATEL for Petitioner(s) : 1 - 2.
MR HARIN P RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 01/05/2007
ORAL JUDGMENT

(1) This petition challenges judgment and order dated 12.04.2001 made by the Gujarat State Co-operative Tribunal (the Tribunal) in Revision Application No.16 of 2001 in the following circumstances.

(2) The respondent-Bank filed Lavad Suit No.111 of 1994 before the Board of Nominees seeking to effect recovery of the suit amount. The principal defence of the petitioners is that the petitioner-partnership firm has not obtained any loan and the transaction shown and the documents produced ex-facie do not establish any loan transaction. During pendency of the Lavad Suit the petitioners moved application Exh.57 under Order XI Rule 12 of the Code of Civil Procedure, 1908 (CPC) for discovery of certain documents stated to be in possession of the plaintiff-bank. This documents had been referred to in the plaint as well as in the inspection report. Originally the said application Exh.57 came to be rejected by the Board of Nominees, but upon Revision Application No.202 of 1999 being filed by the petitioners the Tribunal allowed the Revision Application partly and directed the respondent-Bank to produce the original loan application, inspection report, loan documents, guarantee deed, mortgage deed and

renewal deed, etc.

(3) Pursuant to order dated 30.09.1999 made by the Tribunal in the earlier round of proceedings the petitioners moved application Exh.76 on 05.01.2000 calling upon the Board of Nominees to dismiss the suit of the plaintiff upon failure of the plaintiff-bank to submit the documents in compliance with the order made by the Tribunal. Vide order dated 01.01.2001 the Board of Nominees rejected the application Exh.76, against which the petitioners went in Revision Application, namely, Revision Application No.16 of 2001 before the Tribunal.

(4) After hearing the parties, and taking into consideration the submissions made on behalf of the respective parties, the Tribunal has come to the conclusion that in so far as production of documents is concerned, there is no dispute between the parties but the dispute is in relation to discrepancy in the documents. One of the issues raised before the

Tribunal pertains to production of original documents on record. The Tribunal has noted that the Board of Nominees has recorded that original documents were shown to the Board of Nominees and the plaintiff has undertaken to produce the original documents at every date of hearing by keeping the original documents ready and available. Therefore, the Tribunal has come to the conclusion that in such circumstances once a certified copy is available on record there should not be any dispute as to merely production of the original documents on record if, effectively the original documents are available for consideration by the Court at every date of hearing. That in the event a question arises during the course of hearing regarding obtaining opinion of a handwriting expert qua the original documents then the Board of Nominees can pass necessary orders but till that point of time if the documents are kept in safe custody of the plaintiff with an

undertaking from the plaintiff to present them before the Court as and when called upon to do so at every date of hearing, there can be no question of dismissing the suit under Order XI Rule 21 of the CPC.

(5) Heard the learned advocate for the petitioners. He has reiterated the contentions raised before the Tribunal. The principal grievance is that the petitioners, the defendants in the Lavad Suit, may not be able to successfully defend the suit in absence of such documents being available on record.

(6) On going through the impugned order of the Tribunal and the provisions of Order XI Rule 21 of the CPC it is apparent that there is no error in law committed either by Board of Nominees or the Tribunal vide the impugned orders. In fact the Tribunal has made it more than abundantly clear that in so far as the petitioners-defendants are concerned, their case shall not be prejudiced in any manner

whatsoever merely because the original documents are not produced on record in light of the recoding of undertaking of the plaintiff-Bank by the Board of Nominees.

(7) In the aforesaid set of facts and circumstances of the case, no interference is warranted in the impugned order and the Tribunal dated 12.04.2001 made in Revision Application No.16 of 2001. The petition is accordingly rejected. RULE discharged. Interim relief stands vacated.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*